IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6960 OF 2005

M/s. Hindustan Press ... Petitioner

V/s

Shri Jai Bhawani Wood Works ... Respondents

Mr. K.R. Parekh for the petitioner i/by K.R. Parekh & Co.

Mr. M.H.A. Sayyid for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 27TH FEBRUARY, 2006

P.C.:

1. Heard both sides. Perused the record.

2. Rule. Rule made returnable forthwith.

3. The petitioner has filed this petition against the order passed by the Small Causes Judge, dated 9.6.2005 partly allowing the Interim Notice No. 112 of 2003 in L.E. & C. Suit No. 42/51 of 2003, which was taken out by the petitioner-plaintiff for grant of temporary injunction and for seeking direction to deposit the arrears of compensation and outgoings with further

direction to go on depositing the same.

4. The lower Court came to the conclusion that the plaintiff had made out a prima facie case for seeking injunction and accordingly partly allowed the notice. Further, it was also held that the plaintiff was not entitled to seek direction to the defendant for depositing the compensation at the rate of Rs.12,600/- p.m. and Rs.378/- p.m. for the use of the suit premises.

5. In the course of the argument, the learned counsel for the petitioner brought to my notice the newly amended provision of Order 15-A which is inserted by way of an amendment of Bombay Rent Act, w.e.f. 1977.

6. It is quite apparent from the record that the lower Court appears to be of the view that the status of the defendant was yet to be decided and at the same time the plaintiff could not claim compensation and mesne profits which should be done while the suit is being heard on merits finally.

7. In my considered view, it will be in the interest of justice to issue direction to the occupier of the suit

premises to pay compensation for the use and occupation of the suit premises at the market rate pending the litigation.

8. It is true in this case that no supportive evidence is led by the plaintiff so as to indicate the market rate of the suit premises, however, it is an admitted position that the premises is industrial gala to the extent of about 900 sq.ft. Therefore, the demand of Rs.12,600/- p.m. allegedly to be the market rate cannot be accepted. However, in the interest of justice, it must be noted that the amount of Rs.5,000/- p.m. towards compensation and outgoings would be the fair and proper interim arrangement to be paid by the respondent-defendant.

8. In view of this situation, the Rule is made absolute.

It is hereby directed that the respondent-defendant shall pay the compensation including the outgoings at the rate of Rs.5,000/- p.m. as an interim arrangement pending the litigation between the parties, from the date of the application, in the lower court, pending the suit. This arrangement shall be strictly interim

arrangement without prejudice to the rights and liabilities of the parties concerned.

The amount already paid by the respondent-defendant in the said suit shall be adjusted with the said amount due and payable by the respondent-defendant. The arrears as well as regular deposits to be made by the respondent defendant in the pending R.A.D. Suit.

9. It is submitted on behalf of the respondent-defendant that the petitioner is obstructing the water supply. Hence, the petitioner is directed to ensure supply of water to the premises during the pendency of the suit. The petitioner is allowed to withdraw the amount. With these directions, the petition stands disposed of with no order as to costs.

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